IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

Bail Appl..No. 7403 of 2007()

CRIME NO.30/07 OF PONNANI EXCISE RANGE

: PETITIONER

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1. VIJAYA ,W/O. MANI, THAYATH HOUSE
   PURATHUR VILLAGE, TIRUR TALUK,
   MALAPPURAM.

2. MANI,S/O. KUNJUNNI, THAYATH HOUSE
   PURATHUR VILLAGE, TIRUR TALUK,
   MALAPPURAM.

BY ADV. SRI.RAJIT
SRI.RANJIT BABU

RESPONDENTS: STATE

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.7403 of 2007

Dated this the 3rd day of December 2007

O R D E R

Application for anticipatory bail. The petitioners, spouses, face allegations in a crime registered under Section 55(i) of the Kerala Abkari Act. 30.9 litres of I.M.F.L was allegedly seized from the premises which in turn is alleged to be the residential premises of the petitioners. Excise party on receipt of discreet prior information had allegedly reached the house in question. The second accused/husband allegedly took to his heels. The first accused/wife was available in the house. The contemporaneous seizure mahazer and the occurrence report reveal the complicity of both accused persons. The wife could not be arrested as the detecting excise party did not consist of any woman official. Investigation is in progress. The petitioners now apprehend imminent arrest.

2. Seizure took place on 14/11/2007. The learned counsel for the petitioners raises two contentions. He, first of all, contends that the allegations are false and the house does not belong to the petitioners. Secondly it is contended that at

any rate, allegation under Section 55(i) of the Kerala Abkari Act cannot be raised in respect of a residential building.

3. I find no merit in both contentions at this stage. The presence of the first petitioner in the premises and the fact that the second petitioner had allegedly run away clearly indicate that there are sufficient allegations to attract responsibility of the petitioners for the articles kept in the premises. There is nothing to show that the articles were for any purpose other than sale. I find nothing in law to justify the contention raised that 55(i) of the Kerala Abkari Act is not attracted when the premises where the offence is committed is a residential premises.

4. The learned Public Prosecutor opposes the application. I find merit in such opposition by the learned Public Prosecutor. I find no features available in this case which can justify or warrant the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C This, I agree with the learned Public Prosecutor, is a fit case where the petitioners must appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the

normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioners surrender before the investigating officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007